



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
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CHICAGO, IL 60604-3590

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12/17/01

EPA Region 5 Records Ctr.



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December 7, 2001

REPLY TO THE ATTENTION OF C-14 J

Joan Fencik
General Counsel
Chicago Park District
541 N. Fairbanks
Chicago, Illinois 60611

John T. Smith II
Covington & Burling
1201 Pennsylvania Av NW
Washington, D.C. 20004-2401

Vincent S. Oleskiewicz
Baker & McKenzie
One Prudential Plaza
130 East Randolph Drive
Chicago, Illinois 60601

Re: Lindsay Light II Site
Investigation Work Plan
DuSable Park, Chicago, Illinois

Dear Ms. Fencik, Mr. Smith and Mr. Oleskiewicz :

This letter is to confirm our various November 6, 2001 discussions and resulting approval of and agreement regarding Kerr-McGee's radiation investigation work plan and overall strategy for managing any offsite contamination located at DuSable Park. As you know, in December 2000 and in April and May 2001, U.S. EPA identified four areas of elevated gamma levels at DuSable Park that warranted further investigation. It is U.S. EPA's position that the Respondents to the June 6, 1996 Unilateral Administrative Order Re: Lindsay Light II Site, Docket No. V-W-96-C-353 are responsible for characterizing that potential offsite contamination and remediating any contamination above cleanup levels. In addition, under the Comprehensive Environmental Response, Compensation and Liability Act §107 (a), the current owner of contaminated property is also a potentially responsible party unless the owner falls within an exemption to liability, e.g. innocent landowner (CERCLA §107(b)(3)) or secured creditor (CERCLA §101(20)(A)(E)).

On July 31, 2001 Kerr-McGee submitted to U.S. EPA the results of a limited gamma survey and sampling performed June 15 and July 3 at DuSable Park. By letter dated August 31,

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2001, U.S. EPA reviewed the report and requested Kerr-McGee conduct a more thorough characterization of the gamma anomalies that U.S. EPA identified. In response to that request, Kerr-McGee submitted an Investigation Work Plan dated October 4, 2001. That Investigation Work Plan contained a plan to gamma log a depth of only two feet.

As U.S. EPA reviewed the October 4, 2001 work plan, specifically the Scope and Objectives, paragraph 5, concerns arose that when contamination was confirmed at a location, Kerr-McGee's proposed "step out" borings would not generate adequate data to meaningfully estimate the extent and quantity of buried contamination. In other words, the additional expense of the "step out" borings might not be worth the limited information generated. In addition, while the two foot gamma logs would indicate whether the gamma activity increased or decreased from the surface anomaly, it obviously would not fully define the profile of the buried fill. Still, even a thorough investigation of the surface anomalies alone would not characterize the entire park or allow U.S. EPA to affirmatively state that no further radiologically-impacted subsurface soils were present. My colleague Padma Klejwa and I explained this to J. T. Smith and suggested that, pursuant to the UAO, Kerr-McGee perform a limited investigation of the surface anomalies and then while the park was developed, Kerr-McGee would conduct radiation surveillance and sampling and, if any radioactive material above the Lindsay Light 7.1 pico curies per gram cleanup level was encountered, then Kerr-McGee would transport and dispose of contaminated material in accordance with the UAO.

Subject to his client's approval, Mr. Smith agreed with this suggested approach so long as it was also understood that Kerr-McGee reserved its rights to seek contribution from River East L.L.C., a co-Respondent to the UAO and possibly, from the Chicago Park District, the current property owner.

U.S. EPA then contacted Joan Fencik, counsel for the Chicago Park District who confirmed that the present, draft "passive use" plans for the park development required grading, installation of utilities, and landscaping. Subject to her client's agreement and with the understanding that institutional controls might be necessary to prevent uncontrolled exposure to remaining subsurface contamination, Ms. Fencik was also amenable to the characterization cleanup approach to which Mr. Smith had indicated assent. U.S. EPA also contacted Vince Oleszkiewicz and explained this proposal.

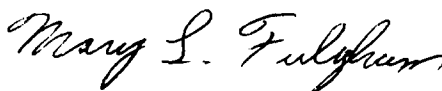
Accordingly, U.S. EPA approves the Kerr-McGee's limited Investigation Work Plan for the DuSable Park Site, Chicago, Illinois dated November 12, 2001 upon the following conditions:

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- 1) The Chicago Park District will give its consent for Kerr-McGee's continued access to DuSable Park for the purpose of monitoring, sampling, and managing radioactive materials at the park;
- 2) In accordance with the June 6, 1996 Unilateral Administrative Order Re: Lindsay Light II Site, Docket No. V-W-96-C-353 Kerr-McGee will provide radiation surveillance monitoring and sampling consistent with approved monitoring and sampling plans for the other Lindsay Light removal sites;
- 3) Kerr-McGee will transport and dispose of any non-naturally occurring radioactive material having radiation levels in excess of 7.1 pico curies per gram;
- 4) Kerr-McGee will reserve all rights to seek contribution from any other potentially responsible party as defined by CERCLA; and
- 5) If radiological contamination is confirmed at DuSable Park, the Park District will agree to record with the Cook County Recorder of Deeds, restrictions prohibiting intrusion into subsurface soils without appropriate health and safety precautions and that these restrictions will also be entered into relevant City of Chicago Department's databases.

If this letter has not fairly captured your understanding of our agreed approach or if your client will not accept this agreed approach, please call me immediately. I appreciate your help in working through these issues and hope that we can continue to work cooperatively at DuSable Park.

Sincerely,



Mary L. Fulghum
Associate Regional Counsel

cc: Padma Klejwa, ORC

bcc: Fred Micke, OSC
Verneta Simon, OSC
Larry Jensen, HP